IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Con.Case(C).No. 1576 of 2006(S)

AGAINST THE JUDGEMENT/ORDER IN OP.22861/1999 Dated 23/12/2005

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PETITIONER : PETITIONER

INDIAN BANK, HEAD OFFICE,
CHENNAI-600 001, BRANCH AT M.G.ROAD,
ERNAKULAM, KOCHI-682 035, REP. BY ITS
ASST. GENERAL MANAGER, INDIAN BANK,
CIRCLE OFFICE, ERNAKULAM, KOCHI-682 035.

BY ADV. SRI.S.EASWARAN

RESPONDENTS: 4TH RESPONDENT IN O.P.

SASINDRAN, AGED ABOUT 50,
FATHER'S NAME NOT KNOWN, ASST. REGISTRAR OF
CO-OP. SOCIETIES (PLANNING), OFFICE OF THE
JOINT REGISTRAR OF CO-OP. SOCIETIES,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

COC NO. 1576 of 2006

Dated this the 9th day of March, 2007

JUDGMENT

The petitioner in this case is the petitioner in O.P.No.22861/1999 which was disposed of by this Court by judgment dated 23.12.2005. The petitioner had filed an arbitration case before the Registrar of Co-operative Societies under Section 69 of the Kerala Co-operative Societies Act. Taking note of the amendment introduced to the Recovery of Debts due to Banks and Financial Institutions Act 1993, the adjudicating authority under the Co-op. Societies Act found that it was no more the jurisdictional forum to dispose of the arbitration suit on merits and expressed the view that the Debt Recovery Tribunal alone was competent to decide the matter on merits. But, instead of returning the plaint to the petitioner, the Registrar

concerned dismissed the arbitration case.

2. This Court declined to uphold the decision to dismiss the suit and expressed the view that even in the absence of a statutory provision in the nature of Order VII Rule 10 CPC, the principle of law coupled with justice and equity embodied in the aforesaid statutory provisions has to be stretched to other areas of adjudication and that in situations like the above, instead of dismissing the plaint, the proper decision would be to return the same before the forum having jurisdiction. Accordingly, the O.P. was disposed of, as stated in paragraph 21 of the judgment, which is extracted below for easy reference:

> "In the result, though I am inclined to uphold the decision of the 4th respondent rejecting the request of the petitioner to transfer the arbitration case to the Tribunal, I hold that the dismissal of the arbitration case warrants interference under Article 226 of the Constitution of India to undo the injustice. I hold that the arbitration case ought to have been returned to the petitioner/plaintiff for proper presentation before the appropriate Tribunal. Ext.P4 order of

> the 4th respondent to the extent it dismissed the arbitration case is set aside. There shall be a direction to the 4th respondent that the plaint shall be returned to the petitioner for presentation before the proper forum within three weeks from the date of return. Upon presentation of the plaint as aforesaid, the Tribunal having jurisdiction shall proceed with the case in accordance with law. Original Petition is disposed of as above. There will be no order as to costs".

The petitioner approached the respondent Registrar requesting to return the plaint to it for presentation before the Debt Recovery Tribunal. For quite sometime, there was no response. After waiting for sometime, the petitioner has filed the above COC complaining that the respondent Registrar has defied the orders of this Court. The respondent entered appearance through the Senior Government Pleader and submitted that failure to return the plaint was neither wilful nor deliberate, but was due to reasons beyond the control of the respondent. Subsequently, an affidavit sworn to by the then Joint Registrar of Co-operative Societies (general) Ernakulam has been filed before

this Court on 5.3.2008. Paragraphs 4,5 and 6 of the above affidavit are relevant and they are extracted below:

> "It is submitted that when I directed AEL Inspector who is the custodian of the ARC files to return the files, I was informed that the above file is not traceable. So, I issued an order for thorough search at the record room and full premises of the office. Smt.C.A.Mary, In-charge of ST Section and PJ.Majeed, Peon of this office were entrusted to trace out the file. After search, they reported that they could not find out the above file inspite of rigorous search. During the search, copies of the judgment of the Hon'ble court has been found out which was seen received by Sri.P.S.Radhakrishnan, then Asst.Registrar(Planning). But he had not taken any action. The subsequent custodian of the file Sri.M.A.Joy, AEL Inspector also did not given any attention in the matter. So, I have already initiated disciplinary action against the erring officers by giving them notices. Reply is awaited.
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> It is respectfully submitted that in our efforts to comply with the judgment of the Hon'ble Court, we contracted the then Asst.Registrar (Planning) Sri.P..AChellamma, who was authorised to hear the

ARC, and obtained a true copy of the plaint in ARAC. when the counsel for the petitioner was contracted for handing over the same, he expressed his readiness if the same is certified as true copy. So, reconstituted file including true copy of the plaint in ARC was received by the counsel of the petitioner on 27.2.2007. I hereby affirm that the copy of plaint handed over to the petitioner's counsel is the true copy of the original plaint in ARC.

By handing over the plaint copy which was obtained after making all efforts from the part of this office may be considered as compliance of the judgment of this Hon'ble Court. The lapse if any, happened was not deliberate or intentional. disciplinary action is already been initiated against the culprits, who caused the lapse. So it is humbly prayed that this Hon'ble Court may be pleased to close the contempt case initiated against the present Assistant Registrar (planning) of this office."

I am satisfied that failure to return the original plaint to the petitioner is neither wilful nor deliberate. It, therefore, follows that further proceedings against the respondent can be dropped. However, before disposing of the COC, it is necessary to make

certain observations, in the interest of justice. As rightly pointed out by the counsel for the petitioner, it is likely that the Debt Recovery Tribunal may raise the objection, that it need entertain the suit, if only the original plaint is produced. But in the facts and circumstances of this case, production of the original plaint is next to impossibility. I make it clear that production of the certified copy of the plaint before the Debt Recovery Tribunal will be sufficient compliance of the judgment in O.P.No.22861/1999. The Debt Recovery Tribunal will have to accept the true copy of the plaint which has been returned to the petitioner from the Department of Co-operative Societies and treat the same as the original plaint and proceed with the matter in accordance with law.

With the above observation COC is closed.

K.K.DENESAN, JUDGE

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